Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

80-970

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO.

GEORGL FIRESTONE, as Secretary of State of Florida, DOROTHY GLISSEN, as Director of Division of Elections, State of Florida, JIM SMITH, as Attorney General of Florida; and ROBERT HART, Chairman of Florida Elections Commission, ANNE KELLY, ROBERT HUCKSHORN, SAMUEL SHORESTIN, and FLORENCE NEIDIG, Members of Florida Elections Commission.

Petitioners

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Respondents

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED BY APPEAL

WHETHER THE DECISION OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, HOLDING UNCONSTITUTIONAL A FLORIDA STATUTE, SHOULD BE GIVEN PLENARY CONSIDERATION BY THIS COURT IN LIGHT OF THE FACT THAT THE DECISION (A) CONFLICTS WITH THE OPINION OF THE SUPREME COURT OF CALIFORNIA IN CITIZENS AGAINST RENT CONTROL V. CITY OF BERKELEY, 167 CAL. RPTR. 84 (1980), IN THAT THE TWO CASES REACH OPPOSITE CONCLUSIONS ON THE QUESTION OF WHETHER IT IS CONSTITUTIONALLY VALID UNDER THE FIRST AMENDMENT TO RESTRICT THE AMOUNT OF POLITICAL CONTRIBUTIONS TO POLITICAL COMMITTEES IN THE CONTEXT OF REFERENDUM ELECTIONS, AND; (B) DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, IN THAT THE QUESTION SET FORTH ABOVE, PRESENTED BY THIS CASE, IS AN ISSUE WHICH HAS BEEN LEFT OPEN BY THIS COURT, WHICH IS OF SIGNIFICANT IMPORTANCE AND WHICH HAS WIDESPREAD RAMIFICATIONS?

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PARTIES TO PROCEEDING

ALL PARTIES TO THIS PROCEEDING ARE CONTAINED IN THE CAPTION OF THE CASE.

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Dade Voters For A Free Choice v. Firestone,	5,9,10,
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Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980)	5,12,14

OTHER AUTHORITIES

Florida Statutes § 106.08(1) 7,8,11

28 U.S.C. § 1254(2) 6,10,

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OPINIONS BELOW

The order of the United States District Court for the Northern District of Florida granting injunctive relief is reported as Let's Help Florida v. Smathers, 453 F.Supp. 1003 (N.D. Fla. 1978). (A 22). The opinion of the United States Court of Appeals, Fifth Circuit, is reported as Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980). The opinion deals with both this case and a consolidated case, Dade Voters For A Free Choice v. Firestone.

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GROUNDS ON WHICH JURISDICTION IS INVOKED

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(2) to review the judgment and opinion of the United States Court of Appeals, Fifth Circuit, entered July 11, 1980, holding invalid as repugnant to the Constitution a Florida State Statute. (A 1-21). A timely petition for rehearing was denied on September 10, 1980. (A94-95).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution

> CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

2. Florida Statutes § 106.08(1)

> 106.08 CONTRIBUTIONS: LIMITATIONS ON.-
> (1) NO PERSON OR POLITICAL COMMITTEE SHALL MAKE CONTRIBUTIONS TO ANY CANDIDATE OR POLITICAL COMMITTEE IN THIS STATE, FOR ANY ELECTION, IN EXCESS OF THE FOLLOWING AMOUNTS:
> (a) TO A CANDIDATE FOR COUNTYWIDE OFFICE OR TO A CANDIDATE IN ANY ELECTION CONDUCTED ON LESS THAN A

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COUNTYWIDE BASIS, $1,000.

(b) TO A CANDIDATE FOR LEGISLATIVE OR MULTICOUNTY OFFICE, $1,000.

(c) TO A CANDIDATE FOR STATEWIDE OFFICE, $3,000.

(d) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A STATEWIDE ELECTION, $3,000.

(e) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A COUNTYWIDE, DISTRICTWIDE, OR LESS THAN COUNTYWIDE ELECTION, $1,000.

(f) TO A POLITICAL COMMITTEE SUPPORTING OR OPPOSING ONE OR MORE CANDIDATES, $1,000.

(g) TO A CANDIDATE FOR COUNTY COURT JUDGE OR CIRCUIT JUDGE, $1,000.

(h) TO A CANDIDATE FOR RETENTION AS A JUDGE OF A DISTRICT COURT OF APPEAL, $2,000.

(i) TO A CANDIDATE FOR RETENTION AS A JUSTICE OF THE SUPREME COURT, $3,000.

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STATEMENT OF THE CASE

Plaintiffs instituted a proceeding in the United States District Court for the Northern District of Florida seeking an injunction against the enforcement of a Florida statute restricting the amount of money a person, natural or corporate, or political committee may contribute to a political committee in support of or in opposition to an issue being voted upon in a referendum election. It was at this stage of the proceedings and in this manner that the questions regarding the statute's constitutionality which are presented for review here were first raised.

The district court granted relief and Defendants appealed. The case was

consolidated with an appeal in the case of Dade Voters For A Free Choice v. Fire-Stone. The United States Court of Appeals, Fifth Circuit, affirmed, holding that the statute was unconstitutional as an impermissible abridgment of First Amendment rights.

The present proceeding follows. Defendants are also seeking review of the decisions presented here in an appeal taken in the consolidated case of Dade Voters For A Free Choice v. Firestone. Certiorari is being utilized in that case because of the existence of a second issue not presented, which could not be raised if that case had proceeded by appeal. 28 U.S.C. § 1254(2).

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REASONS WHY QUESTION PRESENTED IS SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION.

The decision of the United States Court of Appeals, Fifth Circuit, is in clear and direct conflict with the decision of the Supreme Court of California in Citizens Against Rent Control v. City of Berkeley, 167 Cal. Rptr. 84 (Cal. 1980). In addition, the appellate court here has decided an important question of federal law which has not been, but should be, settled by this Court.

In the present case, the Fifth Circuit found unconstitutional Florida Statutes § § 106.08(1)(d) and 106.08(1)(e) which impose limitations on the amount of money that any person, natural or corporate, or political committee may contribute

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to a political committee in support of or in opposition to an issue being voted upon in a referendum election. The court held that the statutory provisions in question "abridge important first amendment rights and are ill-suited for preventing corruption or for promoting disclosure." 621 F.2d at 201. (A 21).

In Citizens Against Rent Control the California Supreme Court dealt with a city ordinance which imposed the same manner of limitations on contributions as did the Florida Statutes dealt with in the present case. The court found the ordinance to be valid, stating:

> We hold above the large contributions to a local ballot measure campaign threaten our electoral system and potentially

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> pervert the purpose of initiative procedures; in light of this conclusion, restricting the size of such contributions "focuses precisely on the problem." (Buckley [v. Valeo], 424 U.S. [1] at p. 28, 96 S.Ct. at p. 639 [1976].) We reject, as the Buckley court did, the argument that mere disclosure of contributions is sufficient for this purpose. (Id. at pp. 27-28, 96 S.Ct. at pp. 638-39.) As with the measure at issue in Buckley, the contribution limitation in section 602 does not interfere with other ways of engaging in political activity, but restricts the one means that represents a danger rather than an aid to the electoral process.
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> 167 Cal. Rptr at 91.

There can really be little dispute that the two opinions conflict. Indeed, the dissent in Citizens Against Rent

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Control specifically noted that the opinion in the present case conflicted with the court's holding in Citizens Against Rent Control. 167 Cal. Rptr. at 94-95. Moreover, one of the cases relied upon in the decision presently under review was the lower appellate court opinion, Citizens Against Rent Control v. City of Berkeley, 99 Cal. App.3d 736, 160 Cal. Rptr. 448 (Ct. App.1st Dist. 1979), reversed by the California Supreme Court in Citizens Against Rent Control. 621 F.2d at 200. (A 17 [1]).

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[1] Review has been sought in this Court of the decision in Citizens Against Rent Control. The appellants therein have asserted conflict with the opinion in the present case. Citizens Against Rent Control v. City of Berkeley, case no. 80-737, Appellants' Jurisdictional Statement, pp. 20-21.

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Given the conflict, Petitioner submits that this Court should give full consideration to the issue presented here. Clearly, it is one that will be presented by statutes and ordinances throughout the nation. Allowing this conflict to remain unresolved will only perpetuate confusion in this area of the law.

Further, the import of the issue is readily apparent, as is the fact that it is an issue which should logically be considered at this time, as a natural matter to be decided subsequent to this Court's decisions in Buckley v. Valeo, 424 U.S. 1 (1976) and First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

In Buckley, this Court struck down

limitations on expenditures, but sanctioned limitations on contributions, in the context of candidate elections. Then, in Bellotti, this Court declared unconstitutional a Massachusetts statute which prohibited corporations from making expenditures for the purpose of influencing the vote on questions submitted to the voters. This Court, however, left open the question of the constitutionality of laws prohibiting or limiting contributions to political committees, the very question presented here. 435 U.S. at 787, n.26. It thus appears that the issue presented here is a logical outgrowth of Buckley and Bellotti which needs to be dealt with by this Court.

Based, therefore, upon the fact that

a logical progression of issues calls for review, the fact that clear conflict exists and the import and widespread ramifications of the issue, Defendants submit that this Court should give this case plenary consideration.

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CONCLUSION

Based upon the foregoing argument, Defendant's respectfully request that this Court accept this cause for plenary consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Statement was furnished by mail to TOBIAS SIMON, P. A., Jennifer Hurst, Esquire, 1492 South Miami Avenue, Miami Florida 33130 on this _____ day of December, 1980.

Respectfully submitted,

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